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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 CISCO SYSTEMS, INC.,

18 Plaintiff,

19 v.

20 ARISTA NETWORKS, INC.,

21 Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**[PROPOSED] ORDER GRANTING
DEFENDANT ARISTA NETWORKS,
INC.'S MOTION TO STRIKE EXPERT
OPINIONS AND TESTIMONY OF
DR. KEVIN C. ALMEROTH**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 The Court, having fully considered the papers and arguments presented by the parties,
 2 hereby GRANTS Arista Networks, Inc.'s Motion to Strike Expert Opinions and Testimony of
 3 Dr. Kevin C. Almeroth as follows:

4 Based on the arguments and written submissions, the Court finds that the following
 5 portions of the "Opening Expert Report of Kevin Almeroth Regarding Copying" submitted on
 6 June 3, 2016, and the "Rebuttal Expert Report of Kevin Almeroth" submitted on June 17, 2016,
 7 are inadmissible and excluded under Federal Rules of Evidence 702, 402, and 403, and under
 8 *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) because they are lay opinions or
 9 summations of evidence that will not assist the trier of fact to understand the evidence or to
 10 determine a fact in issue, they are not based on sufficient facts or data, they are not based on
 11 reliable principles and methods, and/or Dr. Almeroth has not reliably applied those methods to
 12 the record evidence:

- 13 • Dr. Almeroth's opinions and testimony regarding Arista's purported copying
 14 of Cisco's parser source code, including his opinion that Arista's parser
 15 exhibits "non-standard" behavior. Opening Rpt. ¶¶ 81–87, 224; Almeroth
 16 Dep. Tr. 276:25–278:10, 279:9–280:11, 280:13–281:12.
- 17 • Dr. Almeroth's opinions and testimony regarding Arista's purported copying
 18 of Cisco source code relating to CLI command "help descriptions." Opening
 19 Rpt. ¶¶ 100, 221, 225–230 and Exhibit Copying-6; Rebuttal Rpt. ¶ 148(a).
- 20 • Dr. Almeroth's opinions and testimony regarding Arista's purported copying
 21 of the Cisco CLI's "look and feel." Opening Rpt. ¶¶ 65, 174; Rebuttal Rpt.
 22 ¶¶ 64, 70, 136, 137, 145, 158; Almeroth Dep. Tr. 123:1–5; 124:18–125:5;
 23 125:22–126:18; 127:3–128:10; 129:25–143:18.
- 24 • Dr. Almeroth's lay opinions and summations of evidence regarding Arista's
 25 state of mind, including opinions regarding the knowledge, specific intent, and
 26 beliefs of Arista employees pertaining to indirect infringement, bad faith, and
 27 lay opinions and arguments summarizing other non-technical record evidence,
 28 which is not proper expert testimony. Opening Rpt. ¶¶ 70, 73–76, 78–79, 112,
 118, 138–40, 145–48, 152–53, 156–57, 195, 203, 219–20, 242, 246 (and
 footnotes 188–91), 250, 256–57; Rebuttal Rpt. ¶¶ 104, 124, 132, 135, 137,
 138–39, 142–43, 146–47, 149–50, 157, 159, 160.
- Dr. Almeroth's opinions and testimony that merely vouch for the credibility
 and truthfulness of what individuals said in deposition testimony and in
 documents, which invades the province of the jury. Opening Rpt. ¶¶ 51, 98,
 102–10, 115, 136–37, 247, 260; Rebuttal Rpt. ¶¶ 62 (and footnote 30), 73, 75
 (and footnote 47), 102 (and footnote 72), 108 (and footnotes 85 and 86), 125.

- Dr. Almeroth's opinions and testimony that merely involve performing a lay comparison of English words and sentences between Cisco and Arista user documentation. Opening Rpt. ¶¶ 155–167 and Exhibit Copying-1.

Dr. Almeroth will not be permitted to provide expert testimony regarding the foregoing opinions at trial.

IT IS SO ORDERED.

Dated: _____

HON. BETH LABSON FREEMAN